

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

B.K., a minor child, by and through her parent,
GERALDINE KLINGENBERG,

Plaintiff,

Case No. 1:21-cv-12252

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

ALCONA COUNTY COMMUNITY SCHOOLS
BOARD OF EDUCATION, *et al.*,

Defendants.

/

OPINION AND ORDER DISMISSING CASE WITHOUT PREJUDICE

This matter is before this Court upon Plaintiff's Ex Parte Motion for Temporary Restraining Order. ECF No. 2. On September 24, 2021, Plaintiff Geraldine Klingenberg filed this action *pro se* on behalf of her minor child: B.K. Plaintiff's child is a student at Alcona County Public Schools, which has adopted a "universal masking" policy in response to the novel coronavirus ("COVID-19") pandemic. *See* ECF No. 1 at PageID.14. Plaintiff alleges that the masking policy violates B.K.'s rights under the Michigan Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. *Id.* at PageID.26–30. Plaintiff names the Alcona County Community Schools Board of Education and various school officials. Plaintiff has also filed an ex parte motion for a temporary restraining order ("TRO"), in which she asks this Court to enjoin the Board of Education from enforcing its masking policy. *See* ECF No. 2.

Having carefully reviewed Plaintiff's Complaint, TRO Motion, and documents filed in support thereof, this Court will dismiss this case without prejudice because Plaintiff, a non-attorney parent, cannot proceed *pro se* on behalf of her child.

As the Sixth Circuit Court of Appeals has explained, "[a]lthough 28 U.S.C. § 1654 provides

that ‘[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel,’ that statute does not permit plaintiffs to appear *pro se* where interests other than their own are at stake.”¹ *Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002) (quoting 28 U.S.C. § 1654). Therefore, “parents cannot appear *pro se* on behalf of their minor children because a minor’s personal cause of action is her own and does not belong to her parent or representative.” *Id.* at 970; *see also McCoy v. Akron Police Dep’t*, No. 5:21 CV 51, 2021 WL 1857119, at *1 (N.D. Ohio May 10, 2021) (“[W]hile a parent may technically bring suit on behalf of a minor child, he or she may not do so *pro se*—that is, the parent can only bring suit on behalf of the minor child through an attorney.”). Plaintiff is not a licensed attorney.

Judge Thomas M. Rose of the Southern District of Ohio recently dismissed a similar group of cases brought by non-attorney parents, concluding that the cases could not proceed “as filed” because of the rule against non-attorney representation. *See E.B. v. Northmont City Sch. Dist. Bd. of Educ.*, No. 3:21-CV-255, 2021 WL 4321146, at *2 (S.D. Ohio Sept. 23, 2021); *P.G. v. Huber Heights City Sch. Dist. Bd. of Educ.*, No. 3:21-CV-257, 2021 WL 4321171, at *2 (S.D. Ohio Sept. 23, 2021); *T.B. v. Mad River City Sch. Dist. Bd. of Educ.*, No. 3:21-CV-256, 2021 WL 4321160, at *2 (S.D. Ohio Sept. 23, 2021); *C.W. v. Northmont City Sch. Dist. Bd. of Educ.*, No. 3:21-CV-264, 2021 WL 4321120, at *2 (S.D. Ohio Sept. 23, 2021).

For the same reason, this case will be dismissed without prejudice to an attorney refiling it in whole or part. *Cf. Doe ex rel. Guardian v. Internal Revenue Serv.*, No. 3:17CV102-FDW, 2017 WL 1017126, at *1 (W.D.N.C. Mar. 15, 2017) (dismissing without prejudice action brought on behalf of minor by non-attorney parent and noting that “[d]istrict courts have a duty . . . to [sua

¹ “This rule ‘helps to ensure that children rightfully entitled to legal relief are not deprived of their day in court by unskilled, if caring, parents.’” *Grappell v. Carvalho*, 847 F. App’x 698, 701 (11th Cir. 2021) (quoting *Devine v. Indian River Cnty. Sch. Bd.*, 121 F.3d 576, 581 (11th Cir. 1997)).

sponte] enforce the rule against *pro se* representation of a child by his or her non-attorney parent").

Accordingly, it is **ORDERED** that Plaintiff's Complaint, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE**. Provided that doing so is otherwise permissible, Plaintiff may refile this case or any part thereof through an attorney.

Further, it is **ORDERED** that Plaintiff's Motion for Temporary Restraining Order, ECF No. 2, is **DENIED AS MOOT**.

Dated: October 6, 2021

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge